

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

BIG LOTS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-11967 (JKS)
(Jointly Administered)

Re: D.I. 2258

Objection Deadline: March 31, 2025

**LIMITED OBJECTION OF SIEMENS INDUSTRY, INC.
TO THE TWENTY-THIRD POST-CLOSING DESIGNATION NOTICE**

Siemens Industry, Inc. (“Siemens”), by its undersigned counsel, hereby objects on a limited basis (“Objection”) to the Notice of Filing of Twenty-Third Post-Closing Designation Notice seeking the proposed assumption and assignment of executory contracts or unexpired leases [D.I. 2258] (“Notice”),² as follows:

Background

The Bankruptcy

1. On September 9, 2024 (the “Petition Date”), the above captioned debtors (each a “Debtors” and each a “Debtor”) commenced the above-referenced jointly administered bankruptcy cases (“Cases”) under Chapter 11 of the Bankruptcy Code. The general circumstances and events leading to the commencement of the Debtors’ Cases are described in the Declaration of Jonathan Ramsden as Chief Financial and Administrative officers of the Debtors in support of the Debtors’ Chapter 11 Proceedings and First Day Pleadings [D.I. 3] also filed on the Petition Date.

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers, are as follows: Great Basin, LLC (6158); Big Lots, Inc. (9097); Big Lots Management, LLC (7948); Consolidated Property Holdings, LLC (0984); Broyhill LLC (7868); Big Lots Stores - PNS, LLC (5262); Big Lots Stores, LLC (6811); BLBO Tenant, LLC (0552); Big Lots Stores - CSR, LLC (6182); CSC Distribution LLC (8785); Closeout Distribution, LLC (0309); Durant DC, LLC (2033); AVDC, LLC (3400); GAFDC LLC (8673); PAFDC LLC (2377); WAFDC, LLC (6163); INFDC, LLC (2820); Big Lots eCommerce LLC (9612); and Big Lots F&S, LLC (3277). The address of the debtors’ corporate headquarters is 4900 E. Dublin-Granville Road, Columbus, OH 43081.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Notice.

2. On September 23, 2016, an Official Committee of Unsecured Creditors was appointed [D.I. 248].

3. On September 9, 2024, the Debtors filed a motion, inter alia, to establish procedures governing the potential sale of substantially all of the Debtors' assets and approval of the ultimate proposed sale (the "Bid Procedures/Sale Motion") [D.I. 18].

4. On October 25, 2024, the Court entered an order granting the bidding procedures aspect of the Bid Procedures/Sale Motion (the "Bidding Procedures Order") [D.I. 612].

5. On October 30, 2024, the Debtors held an auction of substantially all of the Debtors' assets, and filed a Notice of Successful Bidder for the Sale of the Debtors' Assets [D.I. 661], which declared Gateway BL Acquisition, LLC ("Gateway"), an affiliate of Nexus Capital Management LP ("Nexus"), as the successful bidder.

6. On October 31, 2024, the Debtors filed their Notice of Proposed Assumption and Assignment of Executory Contracts or Unexpired Leases and Cure Amounts [D.I. 683] (the "First Cure Notice") including a list of leases and contracts that were subject to potential assumption and assignment in a Gateway/Nexus sale.

7. On November 4, 2024, Siemens filed an objection to the First Cure Notice [D.I. 887] (the "First Objection") providing evidence that as of November 4, 2024, it was owed no less than \$148,148.28, as more specifically set forth therein.

8. On or about December 19, 2024, Debtors announced that the Gateway/Nexus sale was no longer viable.

9. On December 27, 2024, the Debtors filed their Motion of Debtors for Entry of an Order (I) Approving Sale of Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (II) Authorizing the Debtors to Enter into and Perform Under

the GBRP APA, (III) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief [D.I. 1437] (“GBRP Sale Motion”), in which the Debtors sought approval of an asset purchase agreement with Gordon Brothers Retail Partners, LLC (“GBRP”).

10. On January 2, 2025, the Court entered an order approving the GBRP Sale Motion [D.I. 1556] (“GBRP Sale Order”), which provided GBRP the right to designate any remaining executory contracts and unexpired lease of nonresidential real property for assumption and assignment to Variety or any other designated third party, which sale closed January 3, 2025 [D.I. 1588].

11. Paragraph 29 of the GBRB Sale Order provides in relevant part that -

Pursuant to sections 365(b)(1)(A)–(B) of the Bankruptcy Code and in accordance with the APA and the Designation Rights Procedures, at the applicable Closing, the Buyer or the applicable Designated Buyer shall pay to the respective counterparty the Cure Costs relating to any Assigned Contract.

12. On March 17, 2025, Debtors filed the Notice [D.I. 2258].

13. The Notice provides that the Buyer designates Variety Wholesalers, Inc. (“Variety”) as the Designated Buyer (as defined in the GBRP Sale Order) with respect to the acquisition, assumption and assignment of the Designated Contracts, including, among others, the Siemens Agreement (defined below).

14. The Notice further and incorrectly states that the Cure Cost is \$0.

The Siemens Agreement

15. Siemens is a creditor of the Debtors pursuant to that certain Equipment and Service Purchase Agreement between Siemens and Debtor dated as of November 16, 2006, as amended by the First Amendment dated April 18, 2008, the Second Amendment dated February 13, 2009, the Third

Amendment dated August 14, 2009, the Fourth Amendment dated January 15, 2010, the Fifth Amendment dated March 1, 2011, the Sixth Amendment dated April 11, 2011, the Seventh Amendment dated March 15, 2012, the Eighth Amendment dated March 15, 2012, the Ninth Amendment dated March 8, 2013, the Tenth Amendment dated March 12, 2013, the Eleventh Amendment dated April 30, 2014, the Twelfth Amendment dated August 5, 2014, and the Thirteenth Amendment dated February 15, 2016 (collectively, the “Siemens Agreement”) pursuant to which Siemens provides Debtors certain energy management equipment, software, systems and services, and is currently owed no less than \$324,652.39 as more specifically set forth on the schedule attached as **Exhibit A**.

16. Copies of the unpaid invoices for the period prior to the Petition Date are annexed to Siemens electronically filed proof of claim designated as Claim Number 3735-1-KSPGO-559788204 on the filing receipt.

17. Redacted copies of the unpaid invoices for the period between the Petition Date and March 26, 2025 are attached as **Exhibit B**.

Objections

18. Siemens objects to the Notice on the following grounds:

A. Pursuant to the GBRP Sale Order and applicable law, the Siemens Agreement cannot be assumed without concurrent cure of all arrearages under such contract. “Section 365(b) of the executory contracts section of the [Bankruptcy] Code requires a debtor to cure pre-petition defaults as a precondition of assuming an executory contract.” In re Stoltz, 315 F.3d 80, 86 (2nd Cir. 2002). The correct cure amount due to Siemens is \$324,652.39 plus all additional unpaid

post-petition amounts that arise prior to the date of assumption of the Siemens Agreement (collectively, the “Cure Amount”), and not \$0 as set forth in the Notice.

B. Siemens also seeks confirmation that the contract or contracts proposed to be assumed and assigned is the above-referenced Siemens Agreement.

19. Siemens reserves its right to amend this Objection to include any additional facts as may be determined by its further investigation of the Notice and Siemens Agreement.

20. Any reply to this Objection should be served upon Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, Delaware 19801-1494 Attention: Jeffrey R. Waxman, Esq. and Phillips Lytle LLP, One Canalside, 125 Main Street, Buffalo, New York 14203, Attn: Angela Z. Miller, Esq.

Memorandum of Law

21. Because the basis for this Objection is the GBRP Sale Order itself, and because the legal points and authorities upon which Siemens relies for purposes of this Objection are incorporated into the Objection, Siemens respectfully requests that the Court deem satisfied or, alternatively, waive any requirement of the filing of a separate memorandum of law.

Reservation of Rights

22. Siemens reserves the right (a) to amend, supplement, or otherwise modify this Objection; and (b) to raise such other and further objections to any proposed assumption and assignment, and/or the Cure Amount with respect to the proposed assumption and assignment of the Agreement.

Conclusion

WHEREFORE, Siemens respectfully requests that the Court enter an Order (a) sustaining this Objection in its entirety and overruling the Notice to the extent the relief

requested is inconsistent with this Objection, and (b) providing Siemens with such other and further relief as is appropriate.

Dated: March 28, 2025

MORRIS JAMES LLP

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